Cur. Adv. Vult.

Spenser Wilkinson J. : — The only point in this appeal upon which I had any doubts was the question whether the four charges were properly joined. When the accused's premises were searched certain utensils for use in connection with prepared opium were found in his room, as was also some prepared opium. Behind the panels of the accused's motor car in the garage adjacent to his house were found something over 14 katties of raw opium and about 3 katties of prepared opium. The accused was originally charged with the possession of the raw opium in the car as one charge and the possession of the prepared opium in the car as the second charge. To these two charges were added a third charge in respect of the utensils found in the house and a fourth charge relating to the prepared opium found in the house.

Counsel for the appellant argued that the addition of these charges was wrong and prejudiced the accused.

I have come to the conclusion, however, that the submission of the learned Deputy Public Prosecutor that in substance there was one act of possession in respect of four different items and that the charges were sufficiently connected by reason of the nature of the articles to fall within the provisions of section 175(1) of the Criminal Procedure Code is correct.

That the opium was found in the car somewhat later than the opium and utensils found in the house was purely fortuitous and, had the accused produced the key of the garage when he was asked for it, all these items would have been found at substantially the same time. I think the position was therefore the same as would have arisen if all these different items had been found in different parts of the same house.

[The rest of the judgment is not relevant to this report. *Ed. M.L.J.*].

Appeal dismissed.

Solicitors for the appellant: *Hogan, Adams & Allan.*

K. S. MOHAMED ISMAIL v. CHOO PIN (f).

[A. C. J. (Briggs J.) May 1, 1953]

[Penang — Reference (Rent Assessment Board) No. 1 of 1953]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Ejectment — Tenant receiving rent in excess of that allowed under para (j) — Termination of contractual tenancy — Protection against deprivation of possession.

In this case prior to November 30, 1952 the tenant was receiving from sub-tenants sums in excess of those allowed under para. (j) of s. 13(1) of the Control of Rent Ordinance, but had not since that date received any such sums. The landlord gave notice to determine the contractual tenancy and it was so determined on November 30, 1952. He took proceedings for ejectment under s. 13(1)(j) on March 16, 1953. Counsel for the tenant conceded that if action had been taken immediately on December, 1, 1952 the tenant would have been unable to resist an order for ejectment, but the delay until March 16, 1953 gave the tenant protection.

Held: (1) the protection against deprivation of possession which is ordinarily given by s. 13 does not apply if para. (j) is applicable. Therefore at the moment of the determination of the contractual tenancy, the tenant was not a person protected against deprivation of possession and thus he did not at that moment become a statutory tenant; (2) at the time of the determination of the tenancy it was open to the landlord to take proceedings for ejectment, on the footing of para. (j). The delay could not possibly affect the matter, just as the tenant could have been ejected by action on December 1, 1952, he could be ejected by action taken on March 16, 1953.

Case referred to:—

(1) *Ida Fernandez v. M. Murugiah* (1950) M.L.J. 83.

REFERENCE from the Rent Assessment Board.

I. K. Meek for the applicant.

Tan Cheng Hock for the respondent.

Briggs J. (delivering oral judgment) : —This is a case stated under section 10(1) of the Control of Rent Ordinance, 1948 by the President of the Rent Assessment Board for decision of a question arising from section 13(1)(j) of the Ordinance. The situation is that prior to the 30th November, 1952, the tenant was receiving from the sub-tenant sums in excess of those allowed under paragraph (j), but has not since that date received any such sums. The landlord gave notice to determine the contractual tenancy and it was so determined on the 30th November, 1952. Therefore the wrongful receipt of rents under paragraph (j) and the contractual tenancy terminated at exactly the same period. Under section 15(a) a tenant remaining in possession after the determination of his contractual tenancy by notice does not necessarily become a statutory tenant. He only does so if he cannot by reason of the provisions of the Ordinance be deprived of possession by his landlord. The protection against deprivation of possession which is ordinarily given by section 13 does not apply if paragraph (j) is applicable. Therefore at the moment of the determination of the contractual tenancy, the tenant was not a person protected against deprivation of possession and thus he did not at that moment become a statutory tenant. No doubt it is convenient to refer to him colloquially as a statutory tenant, and it may be convenient so to refer to any person holding over, but not protected, and therefore not a statutory tenant. In the circumstances it is quite clear that at the time of the

determination of the tenancy it was open to the landlord to take proceedings for ejectment on the footing of paragraph (j). He did so take proceedings after a few months on the 16th March, 1953. Mr. Tan Cheng Hock for the tenant conceded that, if action had been taken immediately on the 1st December, 1952, the tenant would have been unable to resist an order for ejectment; but he says that the delay until the 16th March, 1935 gives him protection. I cannot see that this argument can be valid. It is neccessary to consider what the situation was when the contractual tenancy ended. If then the tenant was entitled to protection against deprivation of possession, he became by holding over a statutory tenant; but, if he was not protected against deprivation of possession, he could not become a statutory tenant and never has become one. I think the delay cannot possibly affect the matter and consider that, just as the tenant could have been ejected by action on the 1st December, 1952, he can be ejected by action taken now. The decision in the Singapore case of *Ida Fernandez v. M. Murugiah*[1] appears to support this view.

The reference made to me did not state in terms that the payments under paragraph (j) had continued right up to the determination of the contractual tenancy, and I wish to make it clear that this decision does not deal with the legal consequences which would have ensued, if the payments had been discontinued at any time prior to the expiration of the contractual tenancy. Various considerations might apply and questions of "reasonable time" might arise, with which I cannot now deal. Where, however, as here, the payments contrary to paragraph (j) continued to the very end of the contractual tenancy, I am of opinion that it is possible to obtain ejectment and that the present tense of the word "receives" in paragraph (j) does not lead to any other conclusion. In answering this reference accordingly I therefore decide in favour of the landlord.

The tenant must pay the landlord's costs which, by consent, are assessed at the sum of $100.

Order accordingly.

Solicitors: *Presgrave & Matthews; Huck Aik & Cheng Hock.*

WOON GUAT CHIN (f) v. LIM SIAN POON.

[A C. J. (Thomson J.) March 23, 1954]

[Ipoh — Civil Appeal No. 4 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 13(1)(j) — Ejectment — Tenant receiving excessive rent — Court has no power to go behind decision of the Rent Assessment Board.

In this case the rent paid by the tenant (appellant) to the landlord (respondent) was $25 a month and the monthly rents received by him from his sub-tenants up till some date in September 1950 was $50. The landlord obtained permission in writing of the Rent Assessment Board to apply for ejectment. In the proceedings in the Sessions Court, the landlord asked for and he got ejectment. Against this ejectment the tenant appealed. Counsel for the appellant contended that the permission of the Rent Assessment Board should be disregarded because at the time the landlord applied for it to the Board he had not determined the contractual tenancy. He further argued that sums of money spent by the tenant on repairs should be deemed by reason of s. 3(3) of the Control of Rent Ordinance, 1948 to be increases in the rent paid to the landlord.

Held: (1) the Court has no power to go behind a decision of the Rent Assessment Board. If the Rent Assessment Board acts without jurisdiction or if it violates the principles of natural justice, actions can be called in question by way of *certiorari;* (2) para. (j) of s. 13(1) of the Control of Rent Ordinance, 1948 is contravened if at any time, after the commencement of the Control of Rent Ordinance, the tenant has received rents amounting to more than 75% of the rent paid by him to the landlord.

Cases referred to:—

(1) *M. Pr. Kannappa Chettiar v. L. R. M. Letchumanan Chettiar* (1952) M.L.J. 188.

(2) *Wagner & Anor. v. Tan Eng Yeow* (1947) M.L.J. 33.

(3) *Che Yusof bin Ismail v. Tan Kay Chua* (1952) M.L.J. 133.

APPEAL from Sessions Court.

Ng Git Geow for the appellant.

S. P. Seenivasagam for the respondent.

Thomson J. (delivering oral judgment): — This is an appeal from the Sessions Court at Taiping. The plaintiff in these proceedings is the owner and the defendant is the tenant of premises at No. 34 Market Road, Taiping. In the proceedings in the Sessions Court, the plaintiff asked for and he got ejectment. Against that the defendant in these proceedings has now appealed.

I propose to deal with the matter in this way. In proceedings of this nature, the first question the Court has to determine is whether or not the tenancy has been lawfully determined by notice or otherwise. This tenancy was a monthly tenancy. It is admitted that notice to quit was good and it is admitted that the tenant stayed on after the expiration of that notice. Apart, then, from the provision of the Control of Rent Ordinance, the landlord was entitled to ejectment.

The next question the Court has to consider was whether the tenant was entitled to the protection of the Control of Rent Ordinance. There was no question